

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

STEPHON CHAPMAN

PLAINTIFF

V.

CIVIL ACTION NO.4:07CV52-WAP-JAD

STATE OF MISSISSIPPI, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On September 26, 2007, plaintiff, an inmate of the Mississippi Department of Corrections, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

Chapman complains that he suffered a broken foot while playing basketball and that there was a 110 day delay in diagnosis and treatment. At the *Spears* hearing Chapman admitted that he was bringing suit against some of the defendants even though there was no personal involvement. In a § 1983 action the employers and supervisors cannot be held liable for the actions of prison employees under a respondeat superior theory of liability. *Monell v. Department of Social Services*, 436, U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 611(1978). Defendants, in this group, the State of Mississippi, Joe Thronton,(sic) Christopher Epps, Lawrence Kelly, and Greg Waggoner should be dismissed from this action with prejudice.

Chapman has also named in his lawsuit individuals he faults for the failure to provide care. His complaint also includes individuals he credits for seeking to obtain care for him and those whom he claims in fact provided the needed care to him. No cause of action has been stated as to this group of individuals. In this group is Dr. Leatrice Liddell, Dr. Tom Leman, Dr. Trinica and Dr. Kim. They should be dismissed with prejudice from this case.

As to the remaining individuals who are alleged to have been personally involved in the delay of care, there exists a justiciable basis for Chapman's claim and process has been issued as to this final group.

It is recommended that the State of Mississippi, Joe Thronton(sic), Christopher Epps, Lawrence Kelly, Greg Waggoner, Dr. Leatrice Liddell, Dr. Tom Leman, Dr. Trinica and Dr. Kim be dismissed from this action with prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.1(C) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

SO ORDERED this the 4th day of October, 2007.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE